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ADOPTION

versus

ANNEXATION:

WITH REMARKS ON THE

MYSORE QUESTION.

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BY

VISHWANATH NARAYAN MANDLIK,

PLEADER IN H.M. HIGH COURT, BOMBAY.

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1866.

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TO

SIR GEORGE RUSSELL CLERK, K.C.B., K.S.I.,

MEMBER OF THE COUNCIL OF INDIA, TWICE

GOVERNOR OF BOMBAY, AND KNOWN THROUGHOUT INDIA AS THE

UPHOLDER OF THE JUST RIGHTS OF ITS PEOPLE,

THESE PAGES,

IN TOKEN OF PROFOUND RESPECT,

ARE, BY PERMISSION, INSCRIBED BY HIS OBEDIENT SERVANT,

THE AUTHOR.

INTRODUCTION.

I PROPOSE in the following pages to reply to the observations of Sir Charles Jackson[1] and the Duke of Argyll[2] on the question of annexation; as being determined by what is technically called the law of lapse. That a native of India should enter the lists of political discussion against an ex-judge of the highest Court in India, and against an English Cabinet Minister and possible Governor-General of this country, may at first sight appear strange, if not presumptuous; but it must be remembered that natives of India are at the same time subjects of the Queen of Great Britain; of that Queen who in 1858 pledged her royal word to "respect the rights, dignity and honour of Native Princes as our own," and to "hold ourselves to the natives of our

[1] *A Vindication of the Marquis of Dalhousie's Indian Administration*, by Sir CHARLES JACKSON, (Smith and Elder,) 1865.

[2] *India under Dalhousie and Canning*, by the Duke of ARGYLL, (Longman and Co.), 1865.

Indian territories by the same obligations of duty which bind us to all our other subjects; and those obligations, by the blessing of Almighty God, we shall faithfully and conscientiously fulfil." Now it will surely be allowed to be the bounden duty of her Majesty's Indian subjects to appreciate this gracious promise, to try to remove all causes of misunderstanding between the governors and the governed, and to assist the good government of this Empire to the best of their power and intelligence. The distance between the British people and the natives of India is still unfortunately very great. The interest shown in our affairs by the British Parliament is often wayward and spasmodic. At one time we have measures enacted for us that would do honour to any age or country; at another we are subjected to treatment incompatible with the rights of free men. These sudden changes indicate that the views and feelings of the natives of India are not properly made known to British statesmen in England, and hence fail to be appreciated. The natural consequence is a dangerously fitful government of this vast dependency, by men who have not sufficient data to go upon, and whose success, or otherwise, must, therefore, be the result of chance.

As in the department of natural science we collect particular facts to enable ourselves to form general conclusions, so in history and politics likewise, we are led to the discovery of new measures by noting down the results of old ones. The disturbances which commenced in India in 1857, called "Mutinies" by some, and "Rebellion" by others, are a warning to all the friends of progress, English or Indian. There is no doubt a good deal in a name, but we must not be led away by words. As a geologist treats the stratified and unstratified rocks in their order of succession and gradual formation, so has the historian of the world to evolve the account of the different eras from the facts at his disposal. It is the misfortune of India that in all discussions connected with it, it is necessary to begin with first principles. These so often escape the memory of Indian statesmen, and at such convenient times, that there is no evading the tediousness of always recounting them in detail. Like causes must produce like effects, and yet it seems to be taken for granted by a certain section of English politicians, that this rule does not hold good in India. There is no doubt that the extreme pliancy of the Indian mind, and the immense

depths of Indian forbearance and submission, produce appearances which deceive a casual looker-on into the belief that the placid exterior is the true index to the entire views, feelings, and wishes of the community. Those who are content to look at the surface, of course see no further; yet they may be led by this superficiality to build upon a mine.

An Englishman regards his house as his castle. An English annexationist is, we suppose, no exception. When he preaches the levelling policy of annexation, and dilates on popular rights, the good of the people, and such plausible stuff, he, of course, imagines himself to be taking high ground. But, we ask, does he do to others as he wishes others should do to him? It is one thing to introduce reforms at the expense of others, and quite another thing to do so at the sacrifice of self. Do the annexationists regard other people's rights as they do their own? Do they suppose that the constitution of man is so changed in India, that the very things which an Englishman hates and despises, an Indian covets and admires? Is the instinct of self-preservation absent from a Hindu's breast? If a few unmeaning symbols be clung to

in England as sacred heirlooms, and transmitted to posterity from century to century, as the pride of families, do they suppose that Hindus so essentially differ that they have no veneration for family relics, ancestral descent, ancient honours, and, still more, for Kingdoms, Principalities, castles, villages, lands, and offices enjoyed through countless revolutions, in a land where everything else has changed?

The Thomasonian school in Bengal, as well as the Goldsmid-Hart school in Bombay, proceed upon the same benevolent intentions of "improving" landlords "off the face of the earth;"[3] and the hereditary interests connected with the land or with the Government have had a tendency to become more and more widely alienated from the ruling power. Were the royal commission which Mr. Robert Knight asked for in 1859 granted, and evidence of competent witnesses examined on the spot, or, still better, in England itself—if the natives of India could be persuaded to go there—the revelations as

[3] *Vide* Article I., entitled "Oude," in the Bombay *Quarterly Review*, No. XIV. (September, 1858), ascribed to the able pen of the late Mr. Justice Kinloch Forbes. See *Times of India*, September 4th, 1865.

to the results of the annexation policy in its various departments would, we are sure, be perfectly startling.

One of the greatest misfortunes of the Indian Government is the secrecy with which it works, and the consequent ignorance of both the governors and the governed. The Political and Secret Departments must, as things are at present constituted, be kept distinct, and, to a certain extent, protected from the rude gaze of the public. To a certain extent, I say, for I hold that a Government of India and England combined *ought* to be so strong in its moral, as well as in its physical force, that it ought to be able to live in the light of day altogether. Secrecy is a mere matter of expediency, and is not, we trust, to be regarded as the *ne plus ultra* of policy, beyond which statesmen are not to look in governing the destinies of this mighty Empire. Englishmen laugh at the Pope's asserting the infallibility of the Vatican. Are they not constituting themselves up as so many Avatars of the Pope, when they, as a nation, will not acknowledge their political mistakes, and frankly offer restitution? Words are one thing and acts another. When a cause is proved to be in the right, the British Parliament must show practically that it

will right the wronged. Were this publicly done, the moral effect of one such truthful act would be equivalent to thousands of bayonets. Truth is always truth, on the banks of the Ganges, as well as on those of the Thames—as well in the Tuileries as at the White House of Washington. It is, therefore, a mistake for British statesmen to suppose that the natives of India are so far different in organization as to be incapable of appreciating and being influenced by truth, social and political, moral and religious.

The kindness of nature brings about a state of coma, in which the bleeding of a wounded man ceases for a time, and opportunity is given to tie up the wounds, lest they re-open and the patient die. In an ordinary patient this alternation of bleeding and fainting goes on until the wounds are effectually tied up or the man dies. Such, we say, has been the state of wounded India; now bleeding and anon insensible. We are thus at present in a state of moral coma; and it is now for skilful surgeons to apply the bandages and stop the bleeding, and consequent exhaustion of the country. Physical profligacy is, as we are all aware, sooner or later visited with its sad conse-

quences. Do the annexationists suppose that moral profligacy will, in the long run, not meet with punishment? Nature is constant to her laws. Truth is truth, in all matters alike, whether moral or political, and can have but one result, for error is manifold, but truth is only one. Anything that induces the British nation to swerve for one moment from the path of truth, should at all risks be discarded. It is with a view to show a lapse from truth, in treating of the questions discussed in the following pages, that this pamphlet has been written and presented to all who take an interest in the welfare of India.

After these pages were written, the papers relating to Mysore, moved for by Sir Henry Rawlinson, were published. I rejoice to see such a powerful minority of the Indian Council making a stand for political truth, in opposition to the great current of annexationism. Sir G. Clerk, Sir F. Currie, Sir H. Montgomery, Sir John Willoughby (with whom I differ in some things), and Captain Eastwick have, by their fearless Minutes, proved their title to a place in British Indian history, as the friends of truth and justice.

Bombay, June 20th, 1866.

ADOPTION *v.* ANNEXATION.

CHAPTER I.

THE LAW.

BEFORE proceeding to consider the question of lapse, I propose to state briefly the theory and practice of adoption according to Hindu law. This will enable the reader to judge whether the sanction of the British Government to an adoption is required, either according to Hindu law or equity and good conscience.

Adoption is the affiliation of a son to perform the adopter's exequial rights, and to inherit his property. Such a son is accounted in Hindu law to be the equal of one born from a man's body. In former times twelve kinds of sons were recognized by Hindu law;[1] of these, only two are

[1] *Vyavahára Mayúkha*, Chapter IV., Section IV., 41; *Mitákshara*, Chapter I., Section XI.; *Smritichandriká*, Section V., 3, 4; *Manu*, Chapter IX., 158-180.

now allowed, namely, the *Aurasa*,[2] or the son born to a man, and the *Dattaka*, or the son given.[3]

The ceremony of adoption consists of two parts, the essential and the non-essential. An adoption is invalidated by non-observance of the former, but not of the latter. The essential parts of the ceremony are the giving and receiving of the boy, and, according to some authorities, the performance of a *Homam*, or sacrifice to the sacred fire.[4] Where a *woman* or *S'údra* is the adopter, the sacrifice is performed on her or his behalf by the officiating priest.[5] This is all that is obligatory on the parties; the remaining ceremonies are optional.

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[2] *Aurasa*: [From *uras*, the breast] issue of the breast.

[3] *Vyavahára Mayúkha*, Chapter IV., Section IV., 46; ELPHINSTONE'S *India*, p. 35, 3rd edition; I. STRANGE'S *Hindu Law*, p. 75, 3rd edition, and the authorities therein cited; SIR W. JONES'S *General Note to Manu*, Vol. VII. p. 155, of JONES'S works by TEIGNMOUTH; ELBERLING on *Inheritance*, p. 69; MACNAUGHTEN'S *Principles of Hindu Law*, pp. 17 and 18, 2nd edition.

[4] T. L. STRANGE'S *Manual of Hindu Law*, Para. 106; I. Sir T. STRANGE'S *Hindu Law*, 93—97; MACNAUGHTEN'S *Principles of Hindu Law*, p. 65; I. MORLEY'S *Digest*, p. 19 & 20, Paras. 68, 69, 70, 72, 76, 77; STEELE'S *Summary of Hindu Castes and Customs*, pp. 52 & 53.

[5] *Vyavahára Mayúkha*, Chapter IV., Section V., 12, 13, 15; STEELE, p. 52.

They are, 1, the assembling of relatives and friends; 2, the giving intimation to the Rajah; 3, the giving of a *madhuparka* (*i.e.*, prepared food, consisting of honey, liquid butter, and curds) to the Rajah and to the Brahmanas; 4, feasts to relatives, friends, and Brahmanas, &c. It will be observed that the only place where the Rajah is mentioned is in the second optional ceremony. This has now been tortured into that of obtaining the *consent* of the Rajah, and is made the foundation of the practice and theory of the law of lapse. I shall now proceed to inquire what this ceremony means, and whether there is any reason to suppose that the Rajah's consent was ever necessary in *any* case.

Manu is the oldest writer on Hindu law of which adoption forms a part. It is stated in the Veda itself that "whatever Manu pronounced is a medicine [for the soul]."[6] Let us now see what Manu prescribes on the subject, Manu Chapter IX., p. 168:—

"मा ता पिता वा दद्या तामूयमङ्गिःपुत्रमापदि ॥
सदृशं प्रीतिसंयुक्तं सदृयो दत्रिमःसुतः ॥"

[6] "यद्वैकिञ्चनमनुरवदत्त द्भेषजम्." See also Babu Prosono Coomar Tagore's Preface to the *Vivâda Chintâmani*, p. LXXXIV.

Translation (Sir Wm. Jones's Works, Vol. VIII., p. 28):—"He whom his father or mother, *with her husband's assent*, gives to another as his son, provided the donee have no issue, if the boy be of the same Gotra, and affectionately disposed, is considered as a son given; *the gift being confirmed by pouring water.*"

The italicised portion is from Kullukabhatta's comments.

Madana, another authority, thus comments on the above text:—

"वा शब्दात् मात्र भावे पितव दद्यात्,
पित्रभावे मातैव; उभयसत्त्वे तूभावपीति."

Translation:[7]—"The disjunctive '*or*' means, that if the mother be not present, the father alone may give him away; and if the father be dead, the mother the same; but if both be alive, then even both."

This is the most ancient authority extant, and, except the *Homam*, which follows the gift and the acceptance, there is no obligatory ceremony laid down in the law books.

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[7] STOKES'S *Hindu Law Books*, p. 58.

S'aunaka, whose directions are observed by all the followers of the Rig Veda,[8] declares the mode of adopting a son to consist of the giving and receiving and the sacrifice. I quote the whole passage below, as it will tend to elucidate the subject.[9]

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[8] See the *Sanskára Kaustubha*, leaf 48, p. 1.

[9] BORRADAILE'S *Vyavahára Mayúkha*, Chapter IV., Section V., 8:—S'aunaka thus declares the mode of adopting a son:—"I, S'aunaka, now declare the best adoption: one having no male issue or one whose male issue has died having fasted for a son; having given two pieces of cloth, a pair of earrings, a turban, a ring for the forefinger, to a priest religiously disposed, a follower of Vishnu and thoroughly read in the Vedas: having venerated the king and virtuous Bráhmanas by a Madhuparka; with a bunch of sixty-four stems entirely of the Kusá grass and fuel of the palásá tree also: having collected these articles, having earnestly invited kinsmen and relations; having entertained the kinsmen with food; and especially Bráhmanas: having performed the rights commencing with that of placing the consecrated fire and ending with that of purifying the liquid butter; having advanced before the giver, let him cause to be asked thus, 'give the boy.' The giver being capable of the gift, (should give) to him with the recitation of the five prayers, the initial words of the first of which are *Ye Yadnyena*, &c. Having taken him by both hands with recitation of the prayer commencing '*Devasya tvá*, &c.' having inaudibly repeated the mystical invocation *Angád ange*, &c.: having kissed the forehead of the child: having adorned with clothes and so forth, the boy bearing the reflection of a son: accompanied with dancing songs, and benedictory words, having seated him in the middle of the house:

It will be observed that all the preparations for the ceremony are completed, and that what is called "venerating the King and the virtuous Bráhmanas" by S'áunaka, is thus a mere formality. Besides, I may mention that the words, "having venerated the King and virtuous Bráhmanas with a Madhuparka," do not occur in the original Sanskrit edition, nor in the authorized Maráthi translation published under the auspices of the Government of Bombay. They must, therefore, have been found by Mr. Borradaile in some modern copy, and appear to be an innovation introduced by some compiler from what he saw in the Dattaka-Mimánsá of Nanda Pandita.

The above ceremonial is that from the Mayúkha.

A more ancient, and also a more celebrated authority, is Yádnyavalkya, with the comments of Vidnyánéswara. The work is known as the Mitákshará, which is accounted good law throughout the greater part of Hindústan. Let us see what it has to

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having according to ordinance offered a burnt offering of milk and curds (to each incantation) with recitation of the mystical invocation *Yastvá hridá*, the portion of Rig Veda commencing '*tubhyam agne*,' and the five prayers of which the initial words of the first are *Somo dadat*, &c. let him close the ceremony."

say:—Chapter I., Section XI., verse 13, runs thus: —"The mode of accepting a son for adoption is propounded by Vasishtha: 'A person being about to adopt a son, should take an unremote kinsman, having convened his kindred, and announced his intention to the King, and having offered a burnt offering with recitation of the holy words in the middle of his dwelling.'" [10]

As S'áunaka is the great lawgiver of the followers of the Rig Veda, so is Baudháyana that of the followers of the Taittirúja, or the Black Yajur Veda.[11] The ceremony of adoption laid down by S'áunaka and Baudháyana generally agrees with that prescribed by Vasishtha (as above quoted), with the exception of the *Mantras* [or sacred verses], with which the sacrifice is enjoined to be performed. These three are the principal *Rishis* [or sages], whose rules prevail on this subject at present. Let us inquire what they have to say in regard to the alleged sanction or consent of the king. Baudháyana and Vasishtha have laid down that after the materials for the ceremonial have been pre-

[10] COLEBROOKE'S *Mitákshará*, pp. 810 & 811.

[11] *Dattaka Mimánsá*, Section V., 42; *Dattaka Chándriká*, Section II., 16.

pared, &c., &c., and after "*inviting and informing the kinsmen before, or in the presence of the Raja,*" the acceptance of the son should be made. The original of which the above italicised passage is my version is as follows:—

"बन्धूनाहूय राजनिचावेद्य or

"बन्धूनाहूय राजनि निवद्य."

Colebrooke and Sutherland have translated the passage thus:—"having convened his kindred and announced his intention, or made a representation, to the Raja."[12]

There is not much difference between their translations and my own, as far as they affect the decision of the question now at issue. Because according to either version, as well as my own, it will be perceived that only an announcement is to be made or an intimation given to the Raja. No sanction is required, and no rule for asking *anybody's* permission has ever been laid down in any Hindu law-book that is known in this country.

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[12] COLEBROOKE'S *Mitákshará*, Chapter I., Section XI., 13; and SUTHERLAND'S *Dattaka—Chandriká*, Section II., 11—16; and the same author's version of the *Dattáka—Mimánsá*, Section V., 31 & 42.

Indeed, I cannot well conceive the grounds on which the monstrous assertion that the Sovereign's *sanction* is required to render an adoption valid is based. The Vedas and Shastras lay it down as an obligatory duty on their followers that they *shall* discharge their duty to their ancestors by begetting a legitimate son, or, where that is impossible, by adopting one.[13] No Sovereign in India has yet dared to invade the right which arises from the above duty; and whatever the East India Company may have done before, I confidently trust that the Queen's Proclamation will now be the palladium of all our rights; of the high as well as of the low; of the independent Princes in alliance with the

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[13] *Taittiriya* (or the Black) *Yajurveda*, *Ashtaka* VI., *Prapathaka* III., *Anuváká*, 10:—

"जायमानो वै ब्राह्मणस्त्रिभिर्ऋणवा जायते ब्रह्मचर्येणर्षिभ्यः यज्ञेन देवेभ्यः प्रजया पितृभ्यः । एषवा अनृणो यः पुत्री."

Translation:—"A Bráhamanu immediately on being born, is produced a debtor in three obligations: to the holy saints, for the practice of religious duties; to the gods for the performance of sacrifice: to his forefathers, for offspring. Or he is absolved from debt, who has a son." Also, *Aitareya Bráhmanam*, Book VII., Chapter III., 1: pp. 460-2 of Dr. Haug's *Translation*.

British Indian Empire, of feudatories and of jáhgirdárs, as well as of the meanest subjects of the British Ráj.

Not only is there no authority for holding the position that the Sovereign's sanction is required; but, on the contrary, I will show further on, that the announcement to the Rajah may be dispensed with, and that the omission of this part of the ceremonial does not invalidate any adoption. Before going to that part of the subject, I will proceed to explain why invitation to kinsmen, and announcement to them, in the presence of the Rajah, are recommended rather than commanded by the lawgivers.

Mitaksharâ, Chapter II. Section XI., treats of what is called *Dattáprádánikam* or subtraction of gift, which is thus defined by Nárada:—

"दत्त्वा द्रव्यमसम्यग्यः पुनरादातुमिच्छति, दत्ताप्रादानिकं नाम व्यवहारपदंहि तत्."

Translation:—"When a man desires to recover a thing, which was *not duly given*, it is called subtraction of what has been given; [and this is] a title of administrative justice." [14]

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[14] *Vyavahára-Mayúkha*, Chapter IX., 1.

The italics are mine.

To prevent *unduly given* gifts, and consequent litigation, Yadnyavalkya lays down the following rule :—

"प्रतिग्रहः प्रकाशः स्यात्
स्थावरस्यवि शेषतः" [15]

Translation :—"Acceptance [of a gift] ought to be open; especially [that] of immovable property.

On this Vidnyáneswára (author of the Mitakshará) remarks :[16]—

"प्रतिग्रहणं प्रतिग्रहः सःप्रकाशःकर्त्तव्यः विवादनिराकरणार्थम्॥ स्थावरस्यच विशेषतः प्रकाशमेव ग्रहणं कार्यम्॥ तस्य सुवर्णादिवत् आत्मनि स्थितस्य दर्शयितुम शक्यत्वात्."

Translation :—"Acceptance [of a gift] ought to be openly made to prevent [future] litigation; especially that of immovable property, the taking of which ought to be only in an open manner. Because, immovable property cannot be thus

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[15] *Mitákshará* (Sanskrita Edition. Bombay, 1863, leaf 71, p. 1 :) Book II., Chapter XI., verse 2.

[16] *Ibid.*

shown like gold, &c. [which is portable], and can be produced [out of one's possession]."

Viramittrodaya, another authority, states:—

"देयोक्ति प्रसंगेन प्रतिग्रहे प्रकारविशेषं दर्शयति याज्ञवल्क्यः ॥ 'प्रतिग्रहः प्रकाशः स्यात् स्थावरस्य विशेषत इति.' प्रकाशः प्र कटः ससाक्षिक इति यावत्. पुत्रप्रतिग्रहे प्रकार विशेष उक्तो वसिष्ठेन;—पुत्रंग्रही स्वान् बंधून् आहूय राजनिचावेद्य निवेश नस्यमध्ये व्याहृतिभिर्हुत्वा, अदूर बान्धवान् सन्निकृष्टमेव गृह्णीयादिति." [17]

Translation:—"At the time of declaring what is *Deya* (*i.e.* fit to be given), Yádnyavalkya speaks of a particular rule about acceptance of gifts [thus]: Acceptance [of a gift] ought to be open; especially that of immovable property; open, [that is] public or in the presence of a number of people; or, in other words, in the presence of witnesses. About the acceptance of a son, a special mode is [thus] spoken of by Vasishtha:—The acceptor of a son, having invited his kindred, and told them before (or in the presence of) the King, and having performed

[17] See Calcutta Edition of 1815, leaf 122, p. 2.

the sacrifice with the sacred texts called *Vyárhiti*[18] should take an unremote kinsman" [in adoption].

We see here very plainly the object of the invitation and the announcement. However, to proceed with our authorities.

The Sanskára Kaustubha by Anantadeva, a work of considerable authority, states that Sáunaka is followed by the Rig-vedis and Baudhâyana by the Yajurvedis. It then cites the particulars of the ceremony, which are generally the same as before. As regards inviting the kindred and giving notice to the King, it states thus:—

"बन्धूनाहूय मध्ये राजनिचावेद्य" &c.[19]

Translation.—"Inviting the kindred, and, in the midst, announcing before the King."

Further on, the same lawgiver amplifies upon the expression ((मध्ये)), *Madhye*, or *in the midst*, used in the above passage:—

"मध्येदति बन्धुसमक्षं राजनिश्रावेदनमू दृत्याशय."[20]

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[18] The *Vyarhitis* here mentioned are four:—

भूः; भुवः; खः; भूर्भुवःखः.

[19] Leaf 47, p. 2, of the edition published at Bombay in 1861.

[20] *Ibid.*

Translation.—"In the midst; that is, in the presence of the kindred, before the Rajah, the announcement [is to be made]; this is the object."

The Nirnaya-Sindhu, of Kamalakarabhatta, another work of established reputation, also bears out the view above stated.[21]

The commentator Krishnabhatta adds:—["राजाच ग्रामपाल इत्याहुः,"[22] which means "[to] the Rajah, which [by former writers] is said to mean the village authority or protector."

From the above authorities it will be clearly perceived that inviting the kinsmen, and announcing to them the adoption in the presence of the Rajah is with the view of obtaining publicity and preventing future disputes and litigation: a provision similar in its intention to having witnesses at marriages. That this is the proper interpretation of the above passages is further borne out by other authorities. Sir Thomas Strange, in his learned work on Hindu law (already cited), states that, with a view to certainty, "the law encourages, if it do not stipu-

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[21] It also states as before "बन्धूनाहूय राज्ञानिचा वेद्य" of which I have given my translation above: see page 21.

[22] *Nirnaya-Sindhu, Parichheda* (or Section) III.

late for, whatever is calculated to render it public and solemn. Hence attendance of relations, with notice to the local magistrate or ruling power of the place, is expected, but may be dispensed with."[23] Further authorities for this position are cited by that learned judge, to whose works I must refer my readers.

The word "Rajah," as used in the above passages, is explained to be the Grámaswámi [*i. e.*, the chief, head, or lord of the village] by the Dattaka-Mimansá of Nanda Pandita.[24]

The Dattaka-Chandriká by Devanuda-Bhatta, [Section II., 3 and 4], mentions that the King should be venerated by Madhuparka. "If the King be at a distance, the head man of a village should be invited and thus venerated."

The commentator on the Nirnaya Sindhu also explains "Rajah" to be the Grámádhisha, or lord of the village.[25]

That the invitation to relatives and announcement before the Rajah are not indispensable ceremonies, appears likewise from Steele's commentaries

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[23] Vol. I., Chapter IV., pp. 94, 95.

[24] See Section V., 4, 5, and 6; STOKES, *Hindu Law-books*.

[25] See the passage referred to in Note 22.

on the law and customs of Hindu castes within the Dekhan provinces subject to the Presidency of Bombay, published by order of the late Mountstuart Elphinstone. "It is enjoined," says he, "that notice of an adoption should be given to the relations within the Sagotra Sapindu, and to the Rajah, though no provision appears in case of their disapprobation, even in adoptions by widows." [26]

Mr. Justice Strange, of the High Court of Madras, also states:—"There should be attendance of relations and notice to the ruling local authority, and also sacrifice, oblation, and prayer; but the non-observance of these formalities will not invalidate an adoption; saving as respects the *datta-homam*, or sacrifice by fire." [27]

From the above exposition of the law on the subject, it is clear that adoption consists in the gift and acceptance of the adopted. A sacrifice follows the adoption; but when the adopted is of the same *gotra* (clan) with the adopter, it may be dispensed with.[28] Nobody's consent or sanction is *necessary*. This

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[26] Page 51.

[27] Section 106, T. L. Strange's *Manual of Hindu Law*, 2nd Edition.

[28] See authorities cited in Note 4.

statement to a Hindu would appear superfluous, nay, almost bordering on the ridiculous. For the Vedas and the Shástras enjoin adoption as a sacred duty. The love of transmitting one's name and possessions to posterity is not wanting in the Hindu breast. Tradition and history conspire to strengthen the desire which the highest commands of religion and self-interest have invoked. Hence, on the failure of legitimate male issue, a Hindu, high or low, a Rajah or a peasant, considers it his right, as well as his duty, to perform an adoption for the perpetuation of his family.

The law in this respect is the same for all; and my remarks are applicable to all the Hindus inhabiting this vast country, and professing their allegiance to the Vedas, the Shástras, and the later law-books binding on my co-religionists. Whether a man is a Rajpoot, holding sway over an allied Principality in Rajpootana, or a Maratha, owning a Ráj in Malwa; whether he is a Chief, holding a dependent jaghir in the Southern Maratha country, or a titular Prince like the Rajah of Tanjore; whether he is a talookdar in Oude, or a Khote in Southern Konkan; whether he is a zemindar in Bundelcund, or a patil in the Deccan, it matters nothing. The

Hindu law which I have above stated is the same for all. The right of a Hindu to adopt is absolute. To say that he can adopt a son to perform his funeral rights, but that such son cannot inherit that man's worldly possessions, is a mere mockery. It is making a distinction without a difference. It is nothing less than adding insult to injury. In the case of many of the native Rajahs, such as the Gaikwar, Sindia, Holkar, the princes of Rajpootana, and similar Powers in alliance with the British Government, there is no pretence for British interference with adoptions. There is no authority in Hindu law, or any other law applicable to the subject, requiring such Princes to ask the consent of a stronger friendly Power, which has bound itself by solemn treaties not to interfere with their affairs, and has acknowledged them to be the rulers of their own territories. Their case seems to me to be the strongest of all, as I shall show at greater length hereafter.

I therefore repeat, that a Hindu's right to adopt a son under the rules laid down in the Shástrás is absolute. Indeed, no Sovereign entitled to the name has ever yet thought of disturbing this right, except the late East India Company, and

its Governors and Governors-General. The lamentable accounts of the tyranny and misrule prevailing under the last of the Peshwás, the infamous Báji Ráo, show that he would, and did, confiscate jaghirs and other private property, for reasons which I should be ashamed to commit to paper. And if, as Mr. Knight says,[29] precedents like these are to be treated as law, there is no reason for attempting to argue on any subject. For it would amount to this, that anything might be proved by anything. Sir Charles Jackson (at page 9) quotes Steele, in support of the position that "Enámdars and Wuttundars" should have the consent of the Sirkár or Government for adoption. But he forgets the law, as it is expounded on the pages following, viz., that "an adoption concluded agreeably to the Shástras is not annullable." And that, according to that and other authorities, whatever may be the moral effect of the omission to take such consent, the so-called consent is not essential to the validity of an adoption, especially when the adoptee is of the same gotra [*i.e.*, clan]. If, instead of the vague expres-

[29] See *The Inam Commission unmasked*, by ROBERT KNIGHT, Editor of the *Bombay Times*, page 28.

sion, "the law which requires the sanction of the government," Sir Charles Jackson had quoted the authorities which support him, I should have been better able to meet each and every one of his propositions. But during the course of the last fifteen years of inquiry and research, I have failed to discover even the remnant of any such law. The authority of such persons as Captain Cowper and Mr. Hart is of no value. The proceedings of the Enam Commission, which their misapplied talents supported, have received their due treatment from Mr. Knight's pen. I wish I could forget the misdeeds of this Commission easily; but this I know, that any one of them, if attempted in Europe, would have ruined the reputation of any English statesman.

I wish natives of India had had the moral courage to lay unvarnished accounts of their grievances perseveringly before their rulers; for had these been freely ventilated, and impartially inquired into, the mutiny and rebellion would never have occurred.

CHAPTER II.

THE DOCTRINE OF LAPSE.

In the last chapter, I attempted to show what were the necessary parts of an adoption; and I then explained more particularly that the consent of the King was not required by Hindu law to make the adoption legal.

I may mention that in regard to adoption, as well as in reference to all the essential duties enjoined by Hindu law upon its followers, there is no distinction between nobleman and gentleman. The law for all is alike. The Sovereign as well as the subject are under its equal sway. When the annexationists, therefore, treat the cases of private individuals and Princes as distinct; nay more, when they propose to treat one man (*i.e.* a Prince) in two ways, in such a matter as adoption, allowing his son to succeed to personal, but not to territorial property, they are bound to show their authority

for so doing. As above stated, I say the Hindu law contemplates nobody's restraint upon the adopter, who is just as free to adopt, according to the Shâstras, as he is free to marry. The Paramount State might, with as much propriety, prohibit a man's marrying in order to prevent his begetting an heir to his Principality or estate, as forbid him to adopt.

Sir Charles Jackson (p. 5) asserts "when the Hindu is a Prince holding his Principality subordinate to, or as a gift from, a Paramount State, it is a condition of succession to the Principality, that the adoption be made with the consent of such Paramount State." "His private property," says he, "will pass to the adopted son, whether the Paramount State has, or has not, consented to the adoption; but in the absence of such consent, the Principality reverts to the Paramount State."

This is the cardinal doctrine of the Dalhousie school. This is the foundation of the so-called doctrine of lapse. Sir Charles Jackson is careful not to give his authorities. Is not the supposition natural that he has none to give? The law which is given in the above extract is, according to his own statement (see p. 5), an "exception" to the

"general rule" of Hindu law. The onus, therefore, lies upon him to show his authorities for this exceptional position.

Sir Charles Jackson has taken the cases of Sattara, Nagpore, Jhansi, and Sumbulpore. It is not my purpose at present to treat of these States, which have been already absorbed. I wish to take my stand upon the general position assumed by the annexationist school in regard to adoption, and prove that in law and practice it is untenable. Sir Charles Jackson cites (p. 10) Sir George Clerk as an authority in his favour. Sir George, he says, "opposed the annexation of Sattara, yet felt compelled to admit that the sanction of the Paramount State is by custom required to render 'an adoption to a Principality valid. In the time of our predecessors this was a source of profit to the treasury.'" Unfortunately for the advocate of Lord Dalhousie, Sir George has spoken out his sentiments in unmistakeable terms. In his dissent from the last despatch of Sir Charles Wood, disallowing the Mysore adoption, he clearly enunciates his views thus:—"This new doctrine regarding adoption is so novel and unjust, so opposed to all custom and religions in India, and so utterly inconsistent with

the course of administration as previously exercised during the paramountry of Hindoos, Mahummedans and ourselves, that I can only conceive it to be the result of wild counsel prompting an indiscriminate gratification of a selfish policy which it is endeavoured to veil under a plea of expediency.

"A fact well known to those of us who have been much in the way of observing the circumstances of adoptions of heirs to Chiefships, and to those who have made researches with a view to elucidate the subject, as Sir Henry Lawrence in the Kerowlee case in 1853, and Lord Canning on the general question in 1860, is that, *if guided by the custom of the country and the practice of all our predecessors, our concern in adoptions consists* ONLY *in adjusting the rival pretensions of two or more such heirs;* a precaution which we and our predecessors have made it our duty to exercise in the interests of the peaceable public generally. HENCE *our sanction may in one sense be said to be necessary;* for, naturally, a record of it is always sought by the rightful or by the successful claimant. *Hence it is, too, that the confirmation has never been refused. Hence it is that I* NEVER *found an instance on the old records at Delhi, and that I never knew one occurring within my*

experience of our own times, of any chiefship, either Raj or Sardarree, great or small, being held to have escheated, excepting for felony to the Paramount State. At length the Calcutta Government led off with that flagrant instance of the barefaced appropriation of Sattara."[1] The italics are mine.

What, then, is the "custom" Sir Charles Jackson alludes to? The custom is for the big State or Paramount Power to adjust "the rival pretensions of two or more heirs." This is the testimony of Sir George Clerk, a veteran political, twice Governor of Bombay, and at one time the able Resident at Delhi, the very source whence all information on such points was to be had. Does not this coincide with the object of inviting the *Rajah* or "head of the village" to be present at the ceremony, as described in the preceding chapter?[2] It is to secure publicity and prevent future disputes, that the invitation is made, not because the adoption would be invalid.

However, to proceed with our authorities. The States of Rájpútáná are the oldest Hindu States in India. They are independent States, acting in

[1] *Papers relating to Mysore*, pp. 71 and 72.

[2] See page 18, and the following.

subordinate co-operation with the British Government.[3] Their Rajahs are Sovereign Princes who reign supreme within their dominions. They generally pay a certain sum to the British Government, which on its part undertakes to protect them from external enemies. The British Government is bound by treaties not to interfere in their internal affairs; and unless some future Mangles calls them merely "deeds of gift" and personal contracts, and considers *perpetuity* as an eastern expression for a long period (say of fifty or ninety-nine years), these States must subsist as long as the sun and moon shine on them and the British Empire. The law or custom in regard to adoption in these States is thus stated by Colonel Tod:[4]—

"Adoption:—The hereditary principle, which perpetuates in these States their virtues and vices, is also the grand preservative of their political existence and national manners: it is an imperishable principle, which resists time and innovation: it is this which made the laws of the Medes and

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[3] See *Aitchieson's Treatises*, vol. iv, pp. 10, 34, 45, 65, 72, and following.

[4] *Annals and Antiquities of Rajas'than*, by Lieut.-Colonel James Tod, vol. i., p. 190.

Persians, as well as those of Rajpoots, unalterable. A Chief of Méwar, like his Sovereign, never dies: he disappears to be regenerated. 'Le roi est mort, vive le roi,' is a phrase, the precise virtue of which is there well understood. Neither the crown nor the greater fiefs are ever without heirs. Adoption is the preservative of honours and titles; the great fiefs of Rajasthan can never become extinct."

If a Chief or a Prince dies without making an adoption, the case is also well provided for. Colonel Tod says[5] that "on sudden lapses, the wife is allowed the privilege, in conjunction with those interested in the fief, of nomination, though the case is seldom left unprovided for: there is always a presumptive heir to the smallest subinfeudation of these estates. The wife of the deceased is the guardian of the minority of the adopted."

The idea that a Rajpút Prince "never dies," and that "he disappears to be regenerated," is one which is derived from Hindu law, and is held fast, religiously and politically, by the whole of India. It has its root in the notion of posthumous existence—the doctrine that a man is born again in his son.

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[5] Tod's *Annals*, vol. i., p. 191.

The sacred Vedas themselves inculcate it. The Aitareya Bràhmanam states this very clearly,[6] and is identical with the high principle "in the pure Roman jurisprudence," which according to Mr. Maine is "that a man lives on in his heir—the elimination, if we may so speak, of the fact of death."[7]

"Among the Hindus," says Mr. Maine, "the right to inherit a dead man's property is exactly co-extensive with the duty of performing his obsequies. If the rites are not properly performed, or not performed by the proper person, no relation is considered as established between the deceased and anybody surviving him; the law of succession does not apply, and nobody can inherit the property. Every great event in the life of a Hindu seems to be regarded as leading up to, and bearing upon these

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[6] HAUG'S *Translation*, Book VII., Chapter III., 6 and 7, p. 461. 6. "The husband enters the wife (in the shape of seed), and when the seed is changed to an embryo, he makes her a mother, from whom, after having been regenerated in her, he is born in the tenth month. 7. His wife is only then a real wife (*jáyá* from *jan* to be born) when he is born in her again. The seed which is placed in her, she developes to a being and sets it forth."

[7] MAINE'S *Ancient Law*, p. 190.

solemnities. If he marries, it is to have children who may celebrate them after his death; if he has no children, he lies under the strongest obligation to adopt them from another family, with a view to the funeral cake, the water, and the solemn sacrifice."[8]

Indeed we are told by Colonel Tod that "the laws of Rajpootana, political and religious, admit of no interregnum, and the funeral pyre must be lit by an adopted child, if there be no natural issue."

The law and practice as they existed in Central India are similar to the above. One remarkable example is given by Sir John Malcolm,[9] from

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[8] MAINE'S *Ancient Law*, p. 191.

[9] MALCOLM'S *Central India*, vol. ii., p. 62, note:—"Zalim Singh, the regent of Kotah, on an impression that a complaint had been made to me by the relative of a deceased small renter in the district of Baroda, wrote on the 8th July, 1820, to his agent with me, as follows:—'Tell the General, if the complaint is made, that the usage of this country, when a man dies without children, is to give his estate to his wife, who enjoys it for her natural life. It goes after that to the sons whom she has regularly adopted. In failure of such heir, to the nephew of the deceased; and on their failure to the nearest relation.'

"I asked the Vakeel, if, by the usage of Kotah, the Government had no right to the property of a man who died without children. His reply was, 'None beyond expressing a desire, that part of the property, if large, should be expended for charitable purposes.'"

which we perceive with what feelings the right of adoption was regarded; and which proves that there could be no lapse in the Rájpút States.

Three other instances of adoption under different circumstances are given by Malcolm,[10] in none of which the doctrine of lapse or the right of escheat was thought of, or enforced by any Paramount Power, Mahomedan, Hindu, or British.

Captain James Grant Duff notices several cases of adoption by native Princes according to Hindu law and the custom of the country.[11] No one at that time thought of aiming at the "just" accessions of territory, of which Sir Charles Jackson and the Duke of Argyll are the advocates.

The Honourable Mountstuart Elphinstone, after enumerating the different kinds of sons mentioned by Manu, says,[12] "that the whole of these sons, except the son of a man's body, and his adopted sons, are entirely repudiated by the Hindu law of the present day."

The same eminent statesman thus writes, in

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[10] *Central India*, vol. i., pp. 109, 160, 284.

[11] Amongst others, see his *History of the Maráthás*, vol. ii., p. 337; vol. iii., pp. 27, 28, 321.

[12] *Elphinstone's History of India*, 3rd edition, p. 85, note 87.

1850:[13]—"There is no native State to which the recognition of its succession by the British Government was not of the highest importance; but none of them, I conceive, ever imagined that that Government had a right to regulate the succession as feudal lord, or had any pretensions to the territory, as an escheat, on the failure of heirs to the reigning family." Again he says, "Our relations with the principal states (the Nizam, the Peshwa, Sindia, &c.,) were those of independent, equal Powers, and we possessed no right to interfere in their succession, except such as was derived from our treaties with them."

Again, Sir Charles [afterwards Lord] Metcalfe, in his celebrated Minute on adoption, states his opinion as follows:[14]—"Those who are Sovereign Princes in their own right and the Hindu religion, have, by Hindu law, a right to adopt, to the exclusion of collateral heirs, or of the supposed reversionary right of the Paramount Power; the latter, in

[13] *Memoirs of the Hon. Mountstuart Elphinstone*, by Sir EDWARD COLEBROOK, Bart, M.P. See *Journal of the Royal Asiatic Society of Great Britain and Ireland*, volume xviii., p. 320.

[14] *Selections from the Papers of Lord Metcalfe*, by JOHN W. KAYE, pp. 318 and 319.

fact, in such cases, having no real existence, except in the case of absolute want of heirs, and even then the right is only assumed in virtue of power, for it would probably be more consistent with right that the people of the State so situated should elect a Sovereign for themselves.

"In the case, therefore, of Hindu Sovereign Princes, I should say that, on failure of heirs male of the body, they have a right to adopt, to the exclusion of collateral heirs, and that the British Government is bound to acknowledge the adoption, provided that it be regular, and not in violation of Hindu law. The present Maha Rao of Kotah was adopted, and his case affords an instance in which the right of adoption in a tributary and protected State was fully discussed and admitted by the British Government as the Paramount Power."

I will not weary my readers with further authorities. The Parliamentary Papers of 1850, respecting the Sindia, Holkar, and Dhar successions, are full of similar evidence as to the usage as regards succession by adoption in native States in alliance with the British Government. The opinions and statements of Major Stewart and Mr. Sutherland, Residents at Gwalior; of Mr. Martin, Sir C. M.

Wade, Mr. Bax, and Sir R. Hamilton, Residents at Indore; of Sir John Low, and of the Government of India itself, up to the Sattara annexation, have all been consonant to Hindu law, and the usage of the country. The last witness I shall therefore cite is the late Earl Canning.

In his despatches of the 30th of April, 1860, Lord Canning writes, "I believe there is no example, whether in Rajpootana or elsewhere, of a Hindu State lapsing to the Paramount Power by reason of that Power withholding its assent to an adoption;" and again, "We have not shown, as far as I can find, a single instance in which adoption by a Sovereign Prince has been invalidated by a refusal of assent from the Paramount Power."[15] The evidence of Captain Shepherd and Sir H. Lawrence, quoted by Mr. Eastwick in the same Mysore Papers (pp. 74, 75), points also in the same direction. And, in regard to the first case, namely, that of Sattara, dwelt upon by Sir C. Jackson and the Duke of Argyll, I refer them to the speech of Mr. Sullivan at a meeting of the Court of Proprietors on that question, and a letter of Mr.

[15] *Papers relating to Mysore*, p. 74.

Elphinstone to Sir E. Colebrooke, now published for the first time in the *Journal of the Royal Asiatic Society*.[16]

Mr. Willoughby's reasoning in defence of the Sattara annexation receives the *coup de grace* from this high authority, and the whole web of what Sir Charles Jackson calls "Lord Dalhousie's 'text-book on adoption'" (p. 12), is torn into shreds. Mr. Elphinstone says,[17]—"Mr. Willoughby, and those who adopt his reasoning, proceed to argue that *some* dependent chiefs are subject to this rule, and, *therefore*, the Rajah is subject to it. They instance many inamdars, jageerdars, &c., but can they show any Prince, who had been acknowledged as a Sovereign, to whom the rule had been applied at the time of the treaty? Can they deny that there are now many Sovereign Princes under limitations similar to those on the Rajah, over whom such a right has never been used or pretended to? Nobody will say in Parliament that the adoption by Scindia, the Nizam, the King of Oude, &c., would not be *legal* without our confirmation, or that a son so adopted could not be an heir in the usual sense

[16] Vol. xviii., pp. 318 and 319.

[17] *Ibid.*, p. 318.

of the term; nor will anybody allege, that on the extinction of the families of those Princes, their dominions will devolve on us as an escheat. The claims founded on the general usage, therefore, fall to the ground."

I give this rather long extract unwillingly; but it is difficult to condense Mr. Elphinstone's pregnant sentences; and the "text-book on adoption" has been so largely used by the annexationists, that I felt myself bound to let the public have the other side of the question.

I could easily give more evidence, if needed, but I forbear. I now ask the reader, whether Sir Charles Jackson is right in saying that the Paramount Power can go on absorbing the States of its allies in the way he advocates, according to law and usage as they prevail in Hindustan?

That the British Government in India is now stronger than it was a century ago is nothing to the purpose. I am certain it will not wilfully use its strength for wrong. It will never, I trust, leave the path of truth and justice. These, when pointed out, must be its guides. Her Gracious Majesty has intimated to us, in the memorable Proclamation of 1858, how she desires to rule over us, and in what

manner her Government will treat her allies the Princes of India; and I would beg of her responsible advisers to do as they would be done by. I grieve to see that the wisdom of the Proclamation issued by Lord Derby's Cabinet is questioned by a man so right-aiming in other matters as the Duke.[18] That document has been worth more than the 70,000 British bayonets now in India. It is a tower of strength to both countries; and any statesman who makes light of it is unconsciously sapping Indian faith in the honour of Great Britain.

To proceed.—The annexationists must bear in mind that "a weak Power does not surrender its independence and right to self-government by associating with a stronger, and receiving its protection. This," says Chancellor Kent, "is the settled doctrine of the law of nations."[19]

When the Princes of India sought the protection of the British power, did they do so with the view of annihilating themselves? These Rajahs entered into treaties of perpetual amity and friendship, and trusted to the word, the faith, the honour of

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[18] *India under Dalhousie and Canning*, by the Duke of ARGYLL, pp. 105 and 106.

[19] *Kent on American Law*, vol. iii., p. 511.

England. Do perpetual amity and friendship mean perpetual jealousy, permanent dread of being levelled to the dust, agreeably to the Mangles' theory? I am sure that those who are not blinded by a superstitious belief in their own crotchets will give only one reply. The Hindu law, the usage of the country, are clearly in favour of the Princes. Suppose, for a moment, they were neither favourable to nor against them. Are there no treaties? If there are, are these not acknowledgments of the sovereignty of these Princes by the British Government? That sovereignty may be qualified or unqualified; the authority of the Sovereign may extend over five miles or over 50,000 miles—in the eye of the law it is the same. If the Principality is a sovereignty, the succession to its throne can only be regulated by its own internal laws. There cannot be the slightest pretence for a strong allied Power to step in and impose restrictions on the choice of a successor, except in conformity with the law of that State or in accordance with some treaty engagement. Any other kind of interference is illegal and unjust, and is merely the effect of brute force. An ally, although powerful, is only an ally. To talk of Scindia, the Nizam, and such

others as feudatories, as though they were Earls and Dukes, is to institute comparisons between things which differ from one another as the night does from the day. There is no doubt that the British, being the strongest Power, is able to dictate in many cases to her weaker neighbours. In the case of successions, it is first consulted, because its countenance settles the question in favour of some candidate, who is sure of his seat on the throne; and all fear of internal dissensions is removed. But where is the argument for annexing States in such circumstances? As Mr. Ludlow has so tersely put it, if, from the power of consenting to adoptions, you deduce the power of refusing them, and of confiscating the States so circumstanced, the same doctrine "would authorize the appropriation of partnership interests by coparceners of shares in a public company by boards of directors, of the fortunes of wards by their guardians, of the fee-simple by a tenant for life:"[20] I would add, of deposits by bankers, of our children's goods by our neighbours, and of disputed property by the judges adjudicating the claims to it of rival

[20] *Thoughts on the Policy of the Crown towards India*, by J. M. Ludlow, Esq., Barrister-at-law, p. 119.

suitors. And yet, what does the argument of the annexationists amount to, if not to this?

Again, it is the boast of the English law that the Sovereign never dies.[21] You talk of the demise of the crown. Is not the self-same principle of equal force in India? In Rajpootana, we find that the law admits of no interregnum. What else is it but the principle "rex nunquam moritur" expressed in a different form? The law of nations and the safety of the Indian Princes demand that this principle should be jealously guarded. Whilst on this subject I must confess my astonishment at a passage from Mr. Halliday's Minute quoted by Mr. Ludlow:—"Colonel Low," says Mr. (now Sir Frederick) Halliday, "announces a doctrine regarding succession to a Hindoo Principality, which, *except as regards Rajpoot States*, I never heard of before, which I am satisfied no Hindoo lawyer ever heard of, and which would make it impossible that any Hindoo succession should ever fail."

This betrays the cloven foot of annexation. Why should Mr. Halliday wish it to fail? And how can such wish be reconciled with her Majesty's gracious Proclamation?

[21] Broom's *Legal Maxims*, p. 51.

"We desire no extension of our present territorial possessions; and while we will permit no aggressions upon our dominions or our rights to be attempted, we shall sanction no encroachments on those of others; we shall respect the rights, dignity, and honour of native Princes as our own."

There is no shuffling here. The words are clear and capable of only one interpretation; and that is that there shall be no more annexations under colour of a law or usage of escheat, *which in reality has never existed.*

To recapitulate what has been advanced in the preceding pages:—The Hindu law authorizes its followers to adopt a son in a certain mode; this power of adoption in a Hindu is both a right and a duty; nobody can *legally* take away this right (the Paramount Power itself not excepted). In the case of Sovereign Princes, law and usage have settled the mode of succession; and their relations with the British Government have been founded on treaties which must be observed. Were none of these safeguards in existence, the law of nations would come to the rescue, and determine by the customs of each particular State how its succession ought to be regulated. If, in the face of these facts, the lord

paramountry of Great Britain is still to be paraded before the native public and the Princes of Hindustan, as a pretext for spoliation, I say in the words of a great Indian statesman, the late Mr. Tucker,[22] "True, we wield the power of the sword, and our political supremacy is everywhere acknowledged; but we do not possess, and never can possess, the power to violate treaties — the power to do wrong and to commit injustice — the power to dominate over those who cannot resist us, while we hesitate to enforce it in our relations with those States who enjoy, with a larger territory, a greater degree of independence."

I shall now pass on to a few general reflections on the subject treated of, in its relation to the future of the British Empire in India.

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[22] TUCKER'S *Indian Government*, by J. W. KAYE, p. 251.

CHAPTER III.

GENERAL OBSERVATIONS.

I BELIEVE I have now shown the untenableness of the doctrine of lapse, which has no foundation in the customs of this country. Sir Charles Jackson, after a large amount of special pleading on this question, winds up his book by a carefully-worded eulogy of Lord Dalhousie, and the Duke of Argyll argues that his policy has been the "salvation of India."[1]

When the advocate has a bad case, his best policy is said to be to abuse the attorney on the other side. Sir Charles seems, *mutatis mutandis*, to be following this practice by branding all the hostile criticism as the "clamour of paid advocacy."[2] Admitting the great abilities and varied talents of Lord Dalhousie, is it pretended by his admirers that

[1] *India under Dalhousie and Canning*, p. 68.

[2] *Lord Dalhousie's Indian Administration*, p. 172.

he was more than a man? Is not a defence *per fas et nefas* damaging to the defended? We Hindus are regarded as idolaters; though I might say some of us are better in that respect than some of our English fellow-subjects, and, with the education which we are thankfully receiving from the British Government, our materialism is fast wearing away. I regret to see, however, that Great Britain is retrograding rather than improving. Her sons, like the two authors now before me, will not acknowledge the blunders of her statesmen, but set them before us as models of perfection. Is this not asserting the doctrine of infallibility? Lord Dalhousie, like other men, was liable to error, and his errors as a public man are common property, to be used as warnings from whence we may extract edification and improvement.

The dissatisfaction caused by the policy of "confiscation"[3] was far and wide-spread over the length and breadth of Hindustan. There were men in all parts of the country who were filled with alarm at what was passing around them. Statesmen in England lifted up their voice in defence of the right,

[3] TUCKER'S *Indian Government*, p. 250.

26920

but in vain. I will only quote one instance, from a work published in 1853 by one of our neighbours in Ceylon, Mr. John Capper, late editor of the *Ceylon Examiner*. The passage is characteristic. Mr. Capper says :[4]—

"I cannot, I must confess, agree with those advocates of universal Indian annexation, who persist in attributing all our failures in these cases to stopping short of the complete subjugation of every independent State. Their advice is precisely that of the great quack vegetarian, when told by a patient that his pills were inefficacious, although his instructions had been most rigidly observed. The vendor of pills declared that the sick man could not have taken enough of them; to which the other replied, that he had swallowed the largest dose prescribed in any case, viz., a whole boxful. 'But,' asked the impudent quack, 'did you swallow the box also?' The patient was staggered, and declared that such a proceeding had not occurred to him. 'Ah!' rejoined the bold vegetarian, 'I thought not. Go home and try the

[4] *The Three Presidencies of India*, by JOHN CAPPER, F.R.A.S., late editor of the *Ceylon Examiner*, 1853, pp. 270–1.

box.' Even thus our India quacks would have the State try the native 'box,' regardless of the consequences."

"The loss of revenue, however, is not the only disadvantage we labour under in regard to our intimate connection with the native States. There is the loss of reputation to be taken into account; a loss which, although not as yet apparent in this country, has long been matter of notoriety in India, and cannot any longer be hidden even here. It will reflect everlasting disgrace upon the British name that the most solemn engagements, the most formal treaties with many native Princes, some of whom had long proved themselves our staunch and unfailing allies, should have been utterly disregarded, and cast aside to suit the political or pecuniary purpose of the day; that reputation should have been weighed in the balance against rupees, and made to kick the beam; that the good faith of a Christian country should have been thought as nothing when placed against a few hundred miles of Indian territory."

How could such a state of things end otherwise than it did, when everybody found himself being fast reduced to one common level:—Princes and Chiefs

by disinheritance and annexation; Zemindars by tenant-right set up against them; Inamdars and Wattandars by resumption-Commissions; the priesthood by their temples thrown over as heirlooms to litigation, and by missionary assaults from without, and legislative blows from within, the pale of the Government? What wonder that general distrust and discontent should prevail? The greased cartridges were but the last spark. There can be no doubt that dissatisfaction had spread far and wide, and whatever official reports may say, the great rebellion of 1857 was a religious-political rising commenced by the army, but having much of the popular element in it, as the history of its rise, progress, and end conclusively shows. I tried to solve the question of the chuppatties which were said to be circulated in 1857–8. No one in these parts has been able to unravel the mystery. It is clear, however, that they were a sign of distress, which each village carried beyond its limits, lest by keeping them some calamity might befall its inhabitants. Such superstitious observances are in different forms found to prevail when pestilence or some such calamity befalls the land.

The Duke of Argyll says, "The entire armies

of Bombay and of Madras escaped the plague."[5] Perhaps his Grace is not aware that two whole regiments, the 21st and 27th, were struck off the strength of the Bombay army as being affected with this very plague.

Again, the Duke says[6] that "the infection of the mutiny never reached the Presidencies of Madras or of Bombay." He is misinformed. The whole of the southern Maratha country was more or less disaffected. The rebellion at Nargoond and Sholapore was the direct result of refusal of leave to adopt. The confiscation of the chiefships of Sonee, Tasgaum, Kagwud, Shedbal, Chincharee, and Nipanee, on the ground of escheat by the so-called law of lapse, furnish sufficient explanation of the conflagration which only General Le Grand Jacob's popularity and ability prevented from spreading. The executions at Sattara, Kolapore, Belgaum, Kurrachee, and divers other places, also tell the same tale. These facts are patent to the whole world. If, in spite of all that has happened, Cabinet Ministers will arise to defend a policy exploded by the

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[5] *India under Dalhousie and Canning*, p. 92.

[6] *Ibid*, p. 118.

unanswerable logic of facts, and disowned by the Queen's Government in 1858, then indeed our millennium is very far off indeed. ...

A glorious opportunity now awaits the British Parliament to show practically that it will right the wronged. I allude to the case of the Maharajah of Mysore, which I see is to be brought before the British nation. The Maharajah's cause, or in other words that of British faith, is warmly and judiciously advocated by five members of the Indian Council. But natives of India are grieved to see a person like Mr. Mangles employing arguments as puerile as they are unjust. Whoever heard a treaty such as that of Mysore called a "deed of gift?"[7] Still more strange is it to read that the words "shall be binding upon the contracting parties as long as the sun and moon shall endure, do not imply perpetuity to Indian minds." The Indian mind is shocked at such sophistry in high quarters. As to policy, I say for the safety both of India and England—for our welfare is intimately connected with that of Great Britain—that political honesty and fair dealing is the best policy. I would request members of

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[7] *Mysore Papers*, p. 84.

Parliament to fling away mere "ephemeral political expediency" (to use Mr. Mangles' own expression), and look well and deeply into the past and the future. Weigh the words of Sir G. Clerk, Sir F. Currie, Mr. Eastwick, and the other dissenting members. You are now looking at the events of 1805 from the stand-point of 1866. Take note that your conduct will be watched by the people of India. Do justice even if the heavens fall. "The good of the people," which the annexationists talk of to excuse their injustice to the Princes of India, is a mere stock pretence, and this is well shown by Sir F. Currie and others. Has "the good of the people" been considered when "ephemeral political expediency" pointed the other way?[8] and have not people been handed over bodily to alien rulers when it suited the interests of the British Government?

The Maharajah of Mysore is a Sovereign under a specific treaty. If he breaks it, let him by all means be punished *in accordance with that treaty*. But, for the British nation to permit mere land-hunger to turn itself from the scrupulous obser-

[8] *Mysore Papers*, p. 24.

vance of treaties, is like a descent from the spiritual to the material—a lapse from monotheism into idolatry, which must in time corrupt the governors and the governed, to the certain ruin both of India and England.

THE END.

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